These are the tentative rulings for civil law and motion matters set for Friday, December 6, 2019, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Thursday, December 5, 2019. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: All telephone appearances are governed by Local Rule 20.8. More information is available at the court's website: www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED THESE TENTATIVE RULINGS ARE ISSUED BY THE **HONORABLE MICHAEL W. JONES** AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD AT **9:00 A.M.** IN **DEPARTMENT 3**, LOCATED AT **101 MAPLE STREET, AUBURN, CALIFORNIA**.

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1. M-CV-0072591 Discover Bank vs. Merritt, Elizabeth

Plaintiff's motion for summary judgment is dropped as no moving papers were filed with the court.

2. M-CV-0072995 Barclays Bank Delaware vs. Crowder, Ronson D.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion for Order Admitting the Truth of Matters Specified.

Plaintiff's motion for order admitting the truth of matters specified is granted. The matters specified in plaintiff's request for admissions, set one, are deemed admitted by defendant Ronson Crowder.

3. M-CV-0074345 Elite Acceptance Corporation vs. Wright, Latonya D.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Application for Writ of Possession

Plaintiff's application for writ of possession is granted.

Plaintiff establishes that it has the right to immediate possession of the subject vehicle, which is being wrongfully withheld by defendant. Code Civ. Proc. § 512.010. Plaintiff further establishes the probable validity of its claim. The clerk is directed to issue a writ of possession for the subject vehicle, a 2008 BMW 528I, Vehicle Identification Number WBANU53548CT17379. The court finds that defendant has no current interest in the subject vehicle, and therefore waives plaintiff's undertaking requirement. Code Civ. Proc. § 515.010(b). In order to prevent plaintiff from taking possession of the subject vehicle, defendant will be required to post an undertaking in the amount of $6,275. Code Civ. Proc. §§ 515.010(b), 515.020.

4. M-CV-0075023 Bowman, Lindsay vs. Wells, Rex

The demurrer to complaint is continued to December 13, 2019, at 8:30 a.m. in Department 31.

5. S-CV-0037061 Alvarado, Linda, et al vs. Sonora Estates, LLC, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion for Leave to Amend Cross-Complaint

Defendants and cross-complainants Sonora Estates, LLC, Chris Welsh and Christine Montevaldo's (collectively "cross-complainants'") request for judicial notice is granted. On its own motion, the court takes judicial notice of the entire file in this action. Cross-complainants' objections to evidence are ruled on as follows: Objection Nos. 1, 2 and 4 are sustained. Objection No. 3 is overruled.

Cross-complainants' move for leave to amend their cross-complaint. In determining whether leave to amend should be granted, the court is bound by Code of Civil Procedure section 426.50, which states:

> A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

The current action was filed by plaintiffs on November 25, 2015, and the court observes that this case has been marked by a notable level of contention and animosity between the parties. Over a year after the filing of the complaint, defendants moved to compel arbitration as to ten plaintiffs. The petition to compel arbitration was denied for several reasons, including that defendants failed to prove the existence of valid arbitration agreements. (See Statement of Decision on Defendants' Motion to Compel Arbitration, filed June 2, 2017.) Defendants filed notice of appeal of the trial court's ruling on June 23, 2017. The appellate court affirmed the trial court's ruling, noting that Sonora Estates, LLC had "resoundingly failed" to demonstrate error, as it has not addressed the trial court's dispositive finding that Sonora Estates, LLC failed to prove the existence of valid arbitration agreements. *See Boyd v. Sonora Estates, LLC* (Sept. 5, 2018) 2018 WL 4212853.

Following issuance of the remittitur on November 6, 2018, trial court proceedings recommenced. In December 2018, defendants served written discovery requests on plaintiffs consisting of over 42,000 individual requests. Defendants failed to establish good cause for the volume of discovery served on plaintiffs, and the court granted plaintiffs' motion for a protective order, limiting the number of requests to which plaintiffs would be required to respond. (See Ruling on Submitted Matters, filed February 28, 2019.)

On January 10, 2019, cross-complainants moved for leave to file a cross-complaint against ten of the plaintiffs. The motion was unopposed and granted. The cross-complaint alleged claims of express contractual indemnity, equitable indemnity, and equitable contribution. The claims were premised on the allegation that *if* cross-complainants were held liable to plaintiffs in this action, such liability would be the result of, and caused by, the negligence, carelessness, acts or omissions and/or other fault of cross-defendants, and that cross-complainants' liability in the principle action, if any, would arise only by reason of the active and primary negligence, breaches, or other faults of cross-defendants. (Cross-complaint, ¶¶ 26, 27, 32, 33, 37, 38.)

In July 2019, plaintiffs and defendants participated in mediation in a related federal action initiated by defendants' insurance carriers. The mediation resulted in a settlement between plaintiffs and defendants' insurers, though defendants themselves did not agree to any settlement. The parties dispute the insurance companies' right to settle the action on behalf of defendants, as well as the terms, conditions and import of the settlement itself. Defendants also disputed the ability of plaintiffs to enter into a settlement agreement, as three of the plaintiffs died during the pendency of this action. Thereafter, when plaintiffs moved the trial court for an order substituting successor plaintiffs for the deceased plaintiffs so that the settlement agreement could be fully executed by all parties, defendants opposed the motion. Although the motion was granted, defendants have indicated that they will appeal that ruling. (See Defendants' Objections to Plaintiffs' Request for Dismissal, filed October 21, 2019.) Plaintiffs thereafter fully executed the settlement agreement and dismissed the first amended complaint, which purportedly was a required term of the settlement. Defendants have now filed a motion for attorneys' fees as the prevailing parties in this action based on plaintiffs' dismissal, seeking over $1.5 million in attorneys' fees. That motion is currently set for hearing on January 10, 2020.

The current motion to amend the cross-complaint was filed by cross-complainants on October 11, 2019. Cross-complainants seek leave to amend the cross-complaint to replace the

claims for indemnity and contribution with affirmative claims of negligence and breach of contract. Such claims are based on the same underlying facts as alleged in the initial cross-complaint. Cross-complainants contend that they did not previously seek leave to assert affirmative claims of negligence and breach of contract because they did not anticipate that plaintiffs would settle their claims with defendants' insurers, and dismiss the first amended complaint.

The court maintains discretion to deny leave to file or amend a compulsory cross-complaint that is not timely filed, and is not filed in good faith. *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, 558. The *Gherman* case involved a dispute between parties to a joint venture agreement to purchase and resell real estate. Approximately one month prior to trial, plaintiffs dismissed their claims for dissolution of the joint venture and declaratory relief. Thereafter, on the first day of trial, defendants moved to file a compulsory cross-complaint for judicial dissolution and accounting, which was denied. On appeal, defendants argued that the motion was timely because their claim for accounting had been unnecessary while plaintiffs sought an accounting. The appellate court rejected this reasoning, noting that "[a] plaintiff has a right to know what a defendant's defenses to the action are the same as the defendant has a right to know what causes of action a plaintiff asserts." *Id.* Defendants were charged "with knowledge that there was always a legal possibility that plaintiffs would do precisely what they did – dismiss the accounting cause of action – and a cautious pleader would anticipate such a possibility and take a forthright position from the outset…" *Id.* at 559. Sufficient evidence of a lack of good faith existed in that defendant failed to act for over 30 days after learning of plaintiffs' dismissal, and not until the first day of trial, coupled with the long history of litigation between the parties, including a dispute regarding the right to a jury trial. *Id.*

The trial court maintains "some modicum of discretion in determining whether or not a defendant has acted in good faith." *Gherman v. Colburn*, *supra*, 72 Cal.App.3d at 559. In this case, the court determines that cross-complainants have not acted in good faith. The court observes that this case has been marked by a pattern aggressiveness by defendants for the several years that the litigation has been ongoing. Furthermore, these tactics have been somewhat puzzling in that they have not seemed to this court to be reasonably designed to achieve positive results. For example, defendants moved to compel arbitration against ten plaintiffs for which defendants did not present signed arbitration agreements, over a year after commencement of the action. Defendants then appealed the trial court's determination that no valid arbitration agreements existed, but in that appeal did not address the threshold issue regarding the existence of arbitration agreements. *See Boyd v. Sonora Estates, LLC* (Sept. 5, 2018) 2018 WL 4212853. Defendants served over 42,000 written discovery requests on plaintiffs, but failed to establish any good cause for this action, resulting in a protective order for plaintiffs. Defendants have also opposed plaintiffs' requests to substitute successor plaintiffs for deceased plaintiffs, and have opposed and objected to plaintiffs' requests to dismiss their action.

With this case history in mind, the court turns to the present motion. With respect to the current request to amend the cross-complaint, cross-complainants claim that they could not have anticipated that plaintiffs would settle their claims, even though plaintiffs' intention to participate in the mediation was known for months, and was itself the subject of much contention and motion

practice.[1] The contention that cross-complainants could not have anticipated that plaintiffs might settle their case is not well-taken. Further, the notion that cross-complainants could foresee no need to assert affirmative claims while plaintiffs' action was pending is also questionable. Even if plaintiffs' claims had proceeded to trial, defendants' claims would have necessarily failed if plaintiffs were unable to establish defendants' liability. As in *Gherman*, defendants are "chargeable with knowledge that there was always a legal possibility that plaintiffs would do precisely what they did" – dismiss their action. *See Gherman v. Colburn*, *supra*, 72 Cal.App.3d at 559.

Further, cross-complainants delayed for months after being made aware that plaintiffs had agreed to settle their claims with defendants' insurers. This delay is highly prejudicial to plaintiffs, who entered into the settlement agreement based on the status of the pleadings at that time – and pursuant to which cross-complainants sought damages solely through theories which depended on a preliminary finding of defendants' liability. Permitting cross-complainants to go forward with affirmative claims for damages against the plaintiffs at this stage would work an injustice to plaintiffs, who settled their action and dismissed their first amended complaint based on a reasonable understanding of the liability they faced in this action in light of the status of the pleadings at that time.

The court concludes that cross-complainants' actions with respect to the current motion demonstrate more than simple honest mistake, inadvertence or neglect, leading to the conclusion that they have engaged in bad faith conduct. Based on the foregoing, cross-complainants' motion for leave to amend cross-complaint is denied.

Plaintiffs' request for sanctions pursuant to Code of Civil Procedure section 128.7 is denied. The request is procedurally defective as it fails to comply with Code of Civil Procedure section 128.7(c)(1).

Case Management Conference

Appearance required at 9:00 a.m. in Department 3.

[1] As the parties are aware, after the court granted plaintiffs' request to stay the action pending the mediation, defendants moved to set aside the court's order as void, then filed a petition for writ of mandate with the Court of Appeal when the court took the matter under submission, which petition was summarily denied.

6. S-CV-0037071 Helt, Jerry George vs. Ball, Steven A., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to Enforce Settlement Agreement

Plaintiff's unopposed motion to enforce settlement agreement is granted pursuant to Code of Civil Procedure section 664.6. Judgment shall be entered against defendant Steven A. Ball in the amount of $8,250. Plaintiff's request for attorneys' fees is denied, as the terms of the settlement agreement do not include an attorneys' fees provision.

In light of the judgment, the civil trial conference set December 20, 2019, and trial date set January 6, 2020, are vacated.

7. S-CV-0037890 Potter, William R., et al vs. FCA US LLC, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion for Attorneys' Fees

Plaintiffs' objections to evidence are ruled on as follows: Objection Nos. 1 and 5 are sustained. The remaining objections are overruled.

This case is a lemon law action arising out of plaintiffs William and Carole Potter's purchase of a 2012 Jeep Grand Cherokee. The complaint in this action was filed June 2, 2016. The parties settled the case on April 8, 2019, on the first day of trial. Defendants agreed to pay plaintiffs $122,000 in settlement of the action.

Civil Code section 1794(d) authorizes the recovery of attorneys' fees to a buyer who prevails in an action under that section, "determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." Plaintiffs request attorneys' fees in the amount of $129,130, which includes fees incurred by Knight Law Group, LLP in the amount of $32,810, fees incurred by Wirtz Law APC in the amount of $90,020, and estimated fees relating to the current motion of $6,300. Plaintiffs also request a .5 multiplier resulting in additional attorneys' fees of $64,565, and costs and expenses in the amount of $39,125.36.

Fee setting typically begins with the "lodestar" – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. The rates sought by plaintiffs for work performed by counsel and their staff, including fifteen different attorneys, two paralegals, and one law clerk, range between $200-$650/hour. "The reasonable hourly rate is that prevailing in the

community for similar work." *PLCM Group v. Drexler*, *supra*, 22 Cal.4th at 1095. In the court's experience, rates exceeding $400/hour are not commensurate with Placer County billing rates, including for other cases of this type. Further, this case did not present particularly complex or unique issues which would justify a higher billing rate. Considering all the circumstances of the present case, the reasonable billing rates for similar work which prevail in this community, and the level of experience and actual work performed by various attorneys and staff, the court finds that the reasonable billing rate for the primary lead counsel on the case, Steve Mikhov and Richard Wirtz, is $400/hour. The court finds that the reasonable billing rate for Amy Morse, Diane Hernandez, Kristina Stephenson-Cheang, Amy Rotman, Erin Barnes, Jessica Underwood, and Lauren Veggian is $300/hour. The court finds that the reasonable billing rate for George Aguilar and Deepak Devabose is $275/hour, and the reasonable billing rate for Michelle Lumasag is $200/hour. The court finds that the reasonable billing rate for Rebecca Evans, Andrea Munoz and Samantha Leiner is $150/hour.

Turning to the question of whether the number of hours expended were reasonable, Civil Code section 1794(d) requires the court "to make an initial determination of the actual time expended; and then to ascertain whether under all the circumstances of the case the amount of actual time expended and the monetary charge being made for the time expended are reasonable." *Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104. The factors to be considered by the court include "the complexity of the case and procedural demands, the skill exhibited and the results achieved." *Id.* A prevailing buyer has the burden of "showing that the fees incurred were 'allowable,' were 'reasonably necessary to the conduct of the litigation,' and were 'reasonable in amount.'" *Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 816.

The court has carefully reviewed the billing statements provided by counsel, the pleadings filed in support of and in opposition to the current motion, and the entire file in this action. Based upon that review, the court concludes that the time billed by plaintiff's counsel should be reduced in certain respects. Most significantly, trial in this action was continued seven times. By plaintiffs' admission, five of those continuances were the result of plaintiffs or their counsel being unable to proceed on the scheduled trial date due to personal conflicts or other trials in which counsel was engaged. Plaintiffs also incurred a substantial amount of attorneys' fees in order for their counsel to travel repeatedly from Southern California to personally appear at civil trial conferences related to trial dates for which counsel was not ultimately ready to proceed, as well as for hearings on ex parte applications to continue the trial date. The court finds that, with the exception of fees related to plaintiff's first ex parte application to continue the trial date, such fees were not reasonably incurred in connection with prosecution of the action, and should be stricken.

As noted, fifteen different attorneys from two law firms worked on various aspects of this case. Plaintiffs' counsel suggests that using so many attorneys helps to drive down fees because certain attorneys have particularized knowledge in various tasks, such as written discovery, depositions, or trial preparation. However, from a careful review of the billing statements, the court observes that the use of so many attorneys in this case also resulted in duplicative billing, time billed for different attorneys to review the file in order to perform their discrete task, as well as numerous instances where various attorneys billed to review the work of other attorneys, or the results of events attended by other attorneys. Further, it appears that only one out of the fifteen

attorneys in two law firms was tasked with appearing as trial counsel, contributing to the excessive number of necessary trial continuances referenced above.

The court also generally observes that the billing statements show instances of unreasonable amounts of time spent on various tasks, such as reviewing answers, drafting case management or mandatory conference statements, drafting summaries of depositions, as well as duplicative billings for tasks that were purportedly completed with respect to earlier trial dates, but then "reviewed and revised" for later trial dates, with no showing that changes were necessary or performed to any significant degree. This includes plaintiffs' motions in limine, trial brief, notice regarding financial information, trial subpoenas and on-call agreements, witness lists, statement of the case, damages model, or repair order history table.

In one example of questionable billing, Steve Mikhov claims 2.2 hours incurred at the outset of the case on an unknown date. It is unclear how this time can be accurately accounted for when counsel is unaware of the date on which the work was performed. Otherwise, the vast majority of time claimed by Mr. Mikhov relates to "review" of various documents, pleadings and memoranda. In another example, Knight Law Group, LLP claims 2.7 hours related to preparation for and attendance at the hearing on plaintiffs' motion to compel deposition, for which a tentative ruling in plaintiffs' favor was posted, and no oral argument was requested by defendants. The court emphasizes that it has highlighted some, but not all, of the instances of excessive or unreasonable billings it has observed. The court will strike or reduce fees requested by plaintiffs in line with the court's observations as described above. The court awards attorneys' fees as follows:

Steve Mikhov:	$400/hour x 2.5 hours
Amy Morse:	$300/hour x 17.3 hours
Diane Hernandez:	$300/hour x 24 hours
Kristina Stephenson-Cheang:	$300/hour x 14.7 hours
George Aguilar:	$275/hour x 3.3 hours
Deepak Devabose:	$275/hour x .5 hours
Michelle Lumasag:	$200/hour x 3.7 hours
Richard Wirtz:	$400/hour x 1.3 hours
Amy Rotman:	$300/hour x 77.9 hours
Erin Barnes:	$300/hour x 8.4 hours
Jessica Underwood:	$300/hour x 14.6 hours
Lauren Veggian:	$300/hour x 9.2 hours
Rebecca Evans:	$150/hour x 36.6 hours
Andrea Munoz:	$150/hour x 4.4 hours
Samantha Leiner:	$150/hour x 3 hours

The court declines to award estimated fees requested by plaintiff, as those fees are not supported by declaration. The court determines that no multiplier, either positive or negative, is warranted based on the work performed in this case. The court awards plaintiff attorneys' fees of $19,585 for work performed by Knight Law Group and $40,150 for work performed by Wirtz Law APC. The total amount of attorneys' fees awarded to plaintiffs is $59,735.

Plaintiffs' request for costs and expenses shall be addressed in the ruling on defendants' motion to tax costs.

Motion to Tax Costs

Plaintiffs' objections to evidence are ruled on as follows: Objection Nos. 2 and 5 are sustained. The remaining objections are overruled.

On August 23, 2019, plaintiffs filed a memorandum of costs seeking costs and expenses in the total amount of $39,125.36. Civil Code section 1794(d) provides for an award of costs and expenses to a buyer who prevails in an action under the Song-Beverly Act. However, recoverable costs or expenses are limited to those "determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution" of the underlying action. Civ. Code § 1794(d); *Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 813. Plaintiffs bear the burden of showing that that costs or expenses were (1) reasonably necessary to the conduct of litigation and (2) reasonable in amount. *Levy v. Toyota Motor Sales, U.S.A., Inc., supra*, 4 Cal.App.4th at 816.

If items set forth in a memorandum of costs appear to be proper charges, the verified memorandum of costs is prima facie evidence of the propriety of the costs, and the burden is on the party seeking to tax such costs to show that they were not reasonable or necessary. *Ladas v. Cal. State Auto. Ass'n* (1993) 19 Cal.App.4th 761, 774. Where items that are properly objected to are put in issue, the burden of proof is on the party claiming them as costs. *Id.* at 775-776.

Defendant challenges costs related to filing fees, jury fees, expert fees, photocopies of exhibits, court reporter fees, and "other" costs, comprised of attorney service/messenger, trial transcript, legal research, overnight service, scans and copies, and travel. Based on the court's review of the pleadings in support of and in opposition to the motion, and the entire file in this action, the motion to tax is granted in part.

The court taxes filing fees of $120 related to plaintiffs' second and third ex parte applications to continue trial. These ex parte applications were necessary because plaintiffs' counsel was unavailable to proceed on the scheduled trial date due to other trials in which counsel was engaged.

The motion is denied with respect to jury fees of $150.

Plaintiffs seek expert witness fees in the amount of $18,414.70 related to expert witness Dr. Barbara Luna. Dr. Luna's testimony related to plaintiffs' fraudulent concealment claim, as well as to plaintiffs' calculation of compensatory and punitive damages. Although plaintiffs alleged fraudulent concealment, there is no showing that this claim was viable, or likely to succeed, and plaintiffs' settlement does not reflect any compensation for this claim. In addition, the majority of the work reflected in the invoices from Dr. Luna's office was performed by unidentified staff members, making it difficult to determine whether the rates charged were reasonable under the circumstances. In light of these factors, the court taxes fifty percent (50%) of the fees relating to Dr. Luna's work, in the amount of $9,207.35.

The motion is denied with respect to photocopies of exhibits for trial in the amount of $172.68.

Plaintiffs seek court reporter fees in the amount of $3,623.84. Of this total, $2,228.84 relates to reporting of five civil trial conferences. Plaintiffs do not explain why it would be reasonably necessary to obtain a transcript of a civil trial conference. The court taxes court reporter fees in the amount of $2,228.84. The motion is denied as to remaining court reporter fees relating to the first day of trial.

The motion is granted with respect to legal research costs of $30.76, and copy/scan costs of $402.42. The motion is denied with respect to attorney services/messenger services of $697.87, trial transcript costs of $86, and overnight service costs of $49.40.

Plaintiffs incurred substantial costs in order for their counsel to travel repeatedly from Southern California to personally appear at civil trail conferences related to trial dates for which counsel was not ultimately ready to proceed, as well as for hearings on ex parte applications to continue the trial date. Four continuances of the trial date were ultimately deemed necessary due to the unavailability of plaintiffs' trial counsel. Plaintiffs fail to establish that costs related to such appearances were reasonably necessary to the conduct of the litigation. The court taxes all costs related to the January 26, 2018 civil trial conference, the February 26, 2018 ex parte application to continue trial, the March 23, 2018 civil trial conference, the April 2, 2018 ex parte application to continue trial, the August 24, 2018 civil trial conference, the September 28, 2018 civil trial conference, the October 19, 2018 civil trial conference, and the November 2, 2018, civil trial conference, in the total amount of $3,169.97.

The court also taxes costs related to mileage for attorneys to drive to the airport from their home or office, unexplained hotel charges, printing costs related to civil trial conferences, and all costs related to meals, in the total amount of $1,887.78. *See Ladas v. Cal. State Auto Ass'n* (1993) 19 Cal.App.4th 761, 774. The court notes that this amount includes an apparent mathematical error by which plaintiffs seek mileage costs of $1,624 for mileage totaling 28 miles. Finally, with respect to single night hotel charges of $1,220.35 and $950.35 incurred on or about April 6, 2019, the court taxes hotel charges in excess of $150 per night as not reasonably incurred.

Plaintiffs are awarded costs and expenses in the amount of $20,207.54.

The court acknowledges that the declaration of counsel in support of plaintiffs' opposition to the current motion includes a request for attorneys' fees. This request is denied without prejudice to plaintiffs bringing a separate motion for attorneys' fees.

8. S-CV-0039739 Parvin, Darin E. vs. Coldwell Solar, Inc., et al

The motion for summary judgment is continued to December 13, 2019, at 8:30 a.m. in Department 31.

9. S-CV-0040789 Keeler, Diane vs. Smith, Gary, M.D.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to Compel Production of Documents and Further Responses to Discovery

Defendant Gary Smith, M.D. moves to compel production of documents and further responses to discovery.

Defendant's request to compel production of documents demanded in defendant's Third Amended Notice of Taking of Deposition of Diane Keeler and Request for Production of Documents is granted. Plaintiff shall serve all documents responsive to the subject deposition notice on or before December 20, 2019.

Defendant's request to compel plaintiff to amend written discovery responses is denied, as defendant failed to comply with California Rules of Court, rule 3.1345, by providing a separate statement which identifies each discovery request at issue, and sets forth a statement of the factual and legal reasons for compelling further responses.

Defendant's request for sanctions is denied as the notice of motion fails to identify every person, party, and/or attorney against whom the sanction is sought. Code Civ. Proc. § 2023.040.

10. S-CV-0041027 Zenith Insurance Co. vs. Seaman, Larry L., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion for Leave to File Amended Answer

Defendants Gary McBroom and McBroom Construction, Inc.'s motion for leave to file amended answer is granted. Defendants shall file and serve their amended answer on or before December 20, 2019.

11. S-CV-0041437 Muntz, Cheryl vs. Smashburger Acquisition-Sacramento, LLC

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to Compel Deposition

As a preliminary matter, plaintiffs are instructed to comply with Local Rule 20.2.1 by attempting to coordinate hearing dates with opposing parties prior to filing any future motions.

Plaintiffs' motion to compel deposition is granted. Defendant shall produce their person most qualified to testify on the topics identified in the notice of deposition dated August 9, 2019, and shall produce documents responsive to the accompanying demand for production of documents, on or before December 31, 2019. Pursuant to the agreement between the parties, the deposition will take place in California. Plaintiffs are awarded sanctions in the amount of $760 from defendant and defendants' counsel, jointly and severally.

Motion to Compel Further Response to Special Interrogatories, Set Two

As a preliminary matter, plaintiffs are instructed to comply with Local Rule 20.2.1 by attempting to coordinate hearing dates with opposing parties prior to filing any future motions.

Plaintiffs' motion to compel further response to special interrogatories, set two, is granted. Defendant shall serve verified further responses to the subject discovery requests, without objections, on or before December 20, 2019. Plaintiffs are awarded sanctions in the amount of $760 from defendant and defendants' counsel, jointly and severally.

12. S-CV-0041499 Speedboat JV Partners, LLC vs. Capital One, N.A., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Capital One, N.A.'s Demurrer to Third Amended Complaint

Defendant Capital One, N.A. ("Capital One") demurs to plaintiff's third amended complaint.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

The demurrer is sustained as to plaintiff's first cause of action for breach of contract as third party beneficiary. Plaintiff identifies itself as "expressly an intended beneficiary of the loan agreement and repayment agreement" between Paula Turtletaub ("Turtletaub") and Capital One. (TAC at 24:20-22.) However, plaintiff does not allege breach of the terms of either the loan agreement or repayment agreement. Plaintiff contends that Capital One had a duty under the promissory note "to not unreasonably withhold approval of an assumption agreement that was the purpose of the Repayment Agreement". (TAC at 25:12-14.) Plaintiff does not establish that the loan agreement or repayment agreement included a promise that Capital One would not

unreasonably withhold approval for a future assumption agreement. Accordingly, plaintiff fails to adequately allege breach of contract.

The demurrer is sustained as to plaintiff's second cause of action for breach of the implied covenant of good faith and fair dealing. "'Every contract imposes on each party a duty of good faith and fair dealing in each performance and in its enforcement.'" *Careau & Co. v. Secuirty Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1392 (int. cit. omit.) The burden imposed is "'that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.'" *Id.* (int. cit. omit.) As noted above, plaintiff alleges that it is an intended third party beneficiary of the loan agreement and repayment agreement, but alleges breach of an obligation not set forth in either agreement, relating to approval of a future assumption agreement. Plaintiff fails to allege facts establishing that it had the right to receive benefits under the terms of the loan agreement or repayment agreement, and that Capital One's actions injured plaintiff's right to receipt of such benefits.

The demurrer is overruled with respect to plaintiff's third cause of action for negligence. "[A]s a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." *Nymark v. Heart Fed. Sav. & Loan Ass'n* (1991) 231 Cal.App.3d 1089, 1096. Nevertheless, the court analyzes the existence of a duty of care under the factors set forth in *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650, which include: (1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to the plaintiff, (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5) the moral blame attached to the defendant's conduct, and (6) the policy of preventing future harm. Plaintiff claims that Capital One had a duty to evaluate plaintiff in good faith for assumption of Turteltaub's loan, and that Capital One acted unreasonably by failing to approve plaintiff's loan assumption request. Plaintiff alleges that Capital One "went silent" regarding the loan assumption effort, ignoring phone calls and letters, then disavowed any prior loan assumption efforts by plaintiff. Plaintiff alleges that either in December 2016 or January 2017 (the complaint is inconsistent on this point), Capital One notified Turtletaub that the loan assumption was denied because the loan was in default, and refused further communication on the issue. However, prior to this time, plaintiff alleges that Capital One made specific representations about considering an assumption request if payments were made under the repayment agreement.

The complaint alleges facts which support the argument that the repayment agreement was intended to affect plaintiff. Plaintiff alleges that its members were highly involved in early negotiations for Turtletaub to enter into the repayment agreement, that Capital One was informed during those negotiations that plaintiff would be making the payments under the repayment agreement in order to bring the loan into good standing so that it could assume the loan, and that plaintiff did in fact make all required payments under the repayment agreement, a fact known to Capital One. Further, Capital One was in regular communication with members of plaintiff, including regularly responding to requests for account statements relating to payments made on the loan. In connection with the repayment agreement, plaintiff expended over $1 million towards Turtletaub's loan, specifically and expressly towards the goal of assuming the loan upon satisfaction of the repayment agreement terms. It is foreseeable that plaintiff would be harmed

in the event of Capital One's negligence, and plaintiff adequately alleges resulting harm. In addition, facts supporting moral blameworthiness on the part of Capital One have been alleged, in that Capital One accepted two years of a substantial amount of payments from plaintiff prior to the purported breaches. Finally, the policy of preventing future harm supports imposition of a duty of care under the facts alleged in the third amended complaint.

The demurrer is sustained with respect to plaintiff's fourth cause of action for promissory estoppel. To support this cause of action, plaintiff must allege (1) a promise clear and unambiguous on its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be reasonable and foreseeable; and (4) the party asserting estoppel must be injured by his or her reliance. *Laks v. Coast Fed. Sav. & Loan Ass'n* (1976) 60 Cal.App.3d 885, 890. Plaintiff fails to allege a promise that was clear and unambiguous on its terms. Plaintiff alleges that Capital One represented that if the loan was brought current by performance of the repayment agreement, Capital One "would abide by the Loan terms regarding loan assumption and allow Plaintiff to assume the Loan." (TAC at 29:8-10.) This allegation is significantly different from the subsequent allegation that if the requirements of the repayment agreement were performed, Capital One "would exercise its contractual duty to not unreasonably withhold permission for plaintiff to assume the Cap One Loan and become the borrower of record." (TAC at 29:15-17.) Plaintiff then alleges that it was injured because Capital One "reneged on its promise to permit Plaintiff to assume the Cap One loan." (TAC at 30:9-10.) The discrepancy between the alternate versions of the alleged promise made by Capital One renders the pleading ambiguous, and does not support the argument that plaintiff has alleged "a promise clear and unambiguous on its terms". Accordingly, plaintiff fails to adequately allege its cause of action for promissory estoppel.

The demurrer is sustained as to plaintiff's sixth cause of action for fraud/negligent misrepresentation. The elements for intentional misrepresentation are "(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and, (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff." *Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434. The elements for a negligent misrepresentation claim are " '(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.' [Citations omitted.]" *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50. Each element of a misrepresentation claim must be pleaded with particularity, and when pleading fraud against corporate defendants, plaintiff must specify the identity of the person who made the misrepresentation, his authority to speak on behalf of the corporation, and when and to whom the representation was made. *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157.

The allegations of the third amended complaint fail to satisfy the necessary pleading requirements to state a cause of action for intentional or negligent misrepresentation. With respect

to alleged representations that Capital One would allow plaintiff to assume the loan, or alternatively not unreasonably withhold permission for plaintiff to assume the loan, plaintiff does not allege facts identifying the persons who made the representation, their authority to speak on behalf of the corporation, and when or how the representations were made. Plaintiffs do not allege facts supporting the allegation that the unidentified employees knew the representations were false, or had no reasonable ground to believe the representations were true, at the time they were made. Plaintiff also alleges that Capital One representative Stacy Burns told plaintiff that the loan was required to be in default for an assumption to be considered. In connection with this statement, plaintiff fails to plead justifiable reliance and proximate harm. Plaintiff admits through exhibits attached to the third amended complaint that it did not rely on this representation by permitting the loan to go into default – rather, "the parties exhausted their resources to continue making the $40,000 monthly mortgage payments to Capital One, hence the current payment defaults." (TAC at Exh. 17.) "[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits." *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.

The demurrer is overruled as to plaintiff's seventh cause of action. The allegations of the third amended complaint are sufficient to state a valid cause of action for violation of Civil Code section 2943.

The demurrer is moot as to plaintiff's tenth cause of action for injunctive relief, which is not alleged against Capital One.

The demurrer is sustained as to plaintiff's eleventh cause of action for declaratory relief. This cause of action seeks a declaration of rights as between plaintiff and Capital One, with respect to the loan and plaintiff's desire to assume the loan. However, as Capital One no longer has any interest in the subject loan, plaintiff alleges no basis to seek a declaration of rights against this defendant.

Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Ass'n of Comm. Org. for Reform Now v. Dept. of Industrial Relations* (1995) 41 Cal.App.4th 298, 302. Plaintiff was previously given leave to amend following the court's ruling sustaining defendant's demurrer to the second amended complaint. Allegations supporting the first, second, fourth, sixth, and tenth causes of action remain deficient. Plaintiff does not demonstrate that the defects can be cured, and the third amended complaint does not suggest on its face that it is capable of amendment to state valid claims. Accordingly, as to the first, second, fourth, sixth and tenth causes of action, the demurrer is sustained without leave to amend.

In summary, Capital One's demurrer to third amended complaint is overruled as to plaintiff's third cause of action for negligence, and seventh cause of action for violation of Civil Code section 2943. The demurrer is otherwise sustained without leave to amend. Capital One shall file and serve its answer to the third amended complaint on or before December 20, 2019.

Capital One, N.A.'s Motion to Strike

Capital One, N.A.'s unopposed to motion to strike plaintiff's fifth cause of action for unfair business practices is granted.

Wilmington Savings Fund Society, FSB's Demurrer to Third Amended Complaint

Defendant Wilmington Savings Fund Society, FSB ("Wilmington") demurs to plaintiff's third amended complaint.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

As a preliminary matter, it is conceded by plaintiff that Wilmington itself did not commit any acts of wrongdoing or omissions alleged to have caused injury to plaintiff. With respect to each cause of action excluding those for injunctive and declaratory relief, plaintiff alleges:

> Defendant Wilmington II is named in this cause of action solely based on its position as assignee of the Cap One loan. As assignee, its interest in the loan and Deed of Trust is subject to Plaintiff's claim against Cap One alleged herein. Plaintiff does not allege that Wilmington II undertook the actions alleged as to Cap One. However, to the extent that Cap One is liable to Plaintiff for the breach of duty and/or violations of law alleged herein, any financial compensation or recoupment awarded against Cap One in favor of Plaintiff will reduce the amount of Cap One's loan and attendant security instrument, and which reduction will commensurately reduce the value of the claim held by assignee Wilmington II, the current holder of the Loan and beneficial interest in the Deed of Trust.

(See TAC at 26:3-13.)

Wilmington's liability is alleged to derive solely from Capital One's liability. It follows that, in light of the court's rulings sustaining Capital One's demurrer to certain of plaintiff's claims without leave to amend, and striking plaintiff's fifth cause of action, plaintiff also fails to state those causes of action against Wilmington. Accordingly, Wilmington's demurrer is sustained as to plaintiff's first cause of action for breach of contract, second cause of action for breach of the implied covenant of good faith and fair dealing, fourth cause of action for promissory estoppel, fifth cause of action for unfair business practices, and sixth cause of action for fraud/negligent misrepresentation.

With respect to plaintiff's third cause of action for negligence and seventh cause of action for violation of Civil Code section 2943, plaintiff relies on Civil Code section 1459. Section 1459 states:

> A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

The "maker" in this case is not plaintiff, but rather Paula Turtletaub ("Turtletaub"). Plaintiff is not asserting equities and defenses exiting in favor of Turtletaub with respect to the promissory note or deed of trust. Instead, plaintiff asserts its own affirmative claim of negligence, as well as a claim based on Capital One's failure to respond to plaintiff's request for information. In addition, by its terms, Civil Code section 1459 applies only to a non-negotiable written contract, whereas promissory notes secured by deeds of trust are negotiable. Comm. Code § 3104. Plaintiff alleges no other facts supporting imposition of liability on Wilmington based on the actions of Capital One. Accordingly, the demurrer is sustained as to the third and seventh causes of action.

The demurrer is overruled as to plaintiff's tenth cause of action for injunctive relief, and eleventh cause of action for declaratory relief. Based on a reading of the third amended complaint as a whole, plaintiff alleges an adequate basis to assert these claims against Wilmington.

Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Ass'n of Comm. Org. for Reform Now v. Dept. of Industrial Relations* (1995) 41 Cal.App.4th 298, 302. Plaintiff was previously given leave to amend following the court's ruling sustaining defendant's demurrer to the second amended complaint. Allegations supporting the first, second, third, fourth, sixth, and seventh causes of action remain deficient. Plaintiff does not demonstrate that the defects can be cured, and the third amended complaint does not suggest on its face that it is capable of amendment to state valid claims. Accordingly, as to the first, second, third, fourth, sixth and seventh causes of action, the demurrer is sustained without leave to amend.

In summary, Wilmington's demurrer to third amended complaint is overruled as to plaintiff's tenth cause of action for injunctive relief, and eleventh cause of action for declaratory relief. The demurrer is otherwise sustained without leave to amend. Wilmington shall file and serve its answer to the third amended complaint on or before December 20, 2019.

13. S-CV-0041897 Hawkins, Jerry, et al vs. Balzer, Trever, et al

The demurrer to cross-complaint is continued to December 20, 2019, at 8:30 a.m. in Department 31.

14. S-CV-0042143 Am. Healthcare Administrative Services, Inc. vs. Aizen, Lance

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to Vacate Entry of Default

Defendant Lance Aizen ("Aizen") moves to vacate the default entered against him on May 30, 2019, and the default judgment entered September 4, 2019, pursuant to Code of Civil Procedure sections 473(d), 473(b), or based on a lack of personal jurisdiction.

As a preliminary matter, the court finds that Aizen was validly served with the summons and complaint in this matter, pursuant to Code of Civil Procedure section 415.20(b), which states:

> If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Plaintiffs demonstrate a reasonable number of attempts to serve Aizen at a home he owns in New Jersey, and subsequently at a home he owns in Pennsylvania. Plaintiffs submit evidence that on February 12, 2019, Aizen's wife answered the door at the Pennsylvania home, and informed the process server that Aizen was not home, but to try again during the day. Although Aizen contends that he was living at his New Jersey home "at all relevant times between November 2018 and the present", he does not address or explain his wife's representation to the process server.

Plaintiffs also adequately establish that the summons and complaint were delivered to a competent member of the household. As long as defendant receives actual notice of the lawsuit, substantial compliance with statutory requirements regarding service of summons will generally be held sufficient. *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778. Liberal construction of process statutes extends to substituted service. *Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1392. "The evident purpose of Code of Civil Procedure section 415.20 is to permit service to be completed upon a good faith attempt at physical service on a responsible person…" *Khourie, Crew & Jaeger v. Sabek, Inc.* (1990) 220 Cal.App.3d 1009, 1013. Ms. Aizen's status as the adult daughter of defendant made it more likely than not that he would deliver process to appellants. Thereafter, plaintiffs mailed the application for entry of

default and default judgment paperwork to the address where the summons and complaint were left, in compliance with the statute. Finally, the court notes that Aizen does not deny receiving notice of service. Based on the foregoing, the court finds that service of process was adequately effectuated on Aizen. Accordingly, relief is not available under Code of Civil Procedure section 473(d).

Aizen alternatively seeks relief pursuant to Code of Civil Procedure section 473(b), based on attorney fault. "[W]henever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise or neglect, [the court shall] vacate any (1) resulting default entered by the clerk … or (2) resulting default judgment or dismissal entered against his or her client…" Code Civ. Proc. § 473(b). Relief must be granted under this provision even if the default resulted from inexcusable neglect by defendant's attorney. *Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 897.

Aizen contends that he relied on the advice of counsel in not filing an answer to the complaint, based on the belief that he was not properly served. Aizen's attorney submits a declaration attesting to his belief that Aizen had not been properly served, and had no duty to respond to the complaint. The motion was made no more than six months after entry of the default and default judgment. Under these circumstances, relief is mandatory. Accordingly, Aizen's motion is granted pursuant to Code of Civil Procedure section 473(b), based on attorney fault. **The default entered May 30, 2019, and the default judgment entered September 4, 2019, shall be set aside.**

The issue of whether this court lacks personal jurisdiction over Aizen will be addressed in connection with plaintiff's motion to quash summons or dismiss the action.

Motion to Quash Summons, or in the Alternative, Dismiss for Inconvenient Forum

Defendant's motion to quash summons, or in the alternative, dismiss for inconvenient forum, is **continued to January 10, 2020, at 8:30 a.m. in Department 31**, for further briefing.

Plaintiffs may file and serve a supplemental opposition to the motion on or before December 27, 2019. Defendant may file and serve a supplemental reply on or before January 3, 2020.

15. S-CV-0042451 Penna, Cynthia Della vs. Peters, David

Defendant's motion to compel further responses to requests for admission is continued to December 20, 2019, at 8:30 a.m. in Department 31.

16. S-CV-0042679 Vuong, Don, et al vs. Gonzales, Jean, et al

The motion for attorneys' fees is continued to be heard by Commissioner Glenn M. Holley on December 13, 2019, at 8:30 a.m. in Department 31. The court apologizes for any inconvenience to the parties.

17. S-CV-0042787 Golson, Charles B., et al vs. Cross, Bethany Barry, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to Enforce Subpoena for Real Services LLC Records

Plaintiff's request for judicial notice is granted.

Plaintiff's motion to enforce subpoena for Real Services LLC records is denied.

Pursuant to Code of Civil Procedure section 2020.410(c):

> A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. **It shall command compliance in accordance with Section 2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.**

The subpoena attached as Exhibit I to the declaration of Marysia Okreglak states on its face that it was issued September 3, 2019. The subpoena seeks production of documents on September 18, 2019. As the subpoena on its face does not comply with the requirements of Code of Civil Procedure sections 2020.410 or 1985.3(d), plaintiff may not enforce its compliance. Code Civ. Proc. § 1985.3(k).

Motion to Enforce Subpoena for Bethany Cross Records

Plaintiff's request for judicial notice is granted.

Plaintiff's motion to enforce subpoena for Bethany Cross records is denied.

Pursuant to Code of Civil Procedure section 2020.410(c):

> A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. **It shall command compliance in accordance with Section 2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.**

The subpoena attached as Exhibit J to the declaration of Marysia Okreglak states on its face that it was issued September 3, 2019. The subpoena seeks production of documents on

September 18, 2019. As the subpoena on its face does not comply with the requirements of Code of Civil Procedure sections 2020.410 or 1985.3(d), plaintiff may not enforce its compliance. Code Civ. Proc. § 1985.3(k).

18. S-CV-0042799 Wright, Shirley, et al vs. Likely Land & Livestock Co., Inc.

The demurrer to cross-complaint was continued to January 3, 2020, at 8:30 a.m. in Department 31.

19. S-CV-0042933 Sveen, Cheyanne vs. Heritage Hotel Group, Inc., et al

Plaintiff's motion to compel is continued to December 20, 2019, at 8:30 a.m. in Department 31.

20. S-CV-0043029 J.P.S.S., LLC - In Re the Petition of

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Petition to Approve Transfer of Payment Rights

The petition to approve transfer of payment rights by and between S.W. and J.P.S.S., LLC, is denied.

In determining whether a proposed transfer should be approved, the court reviews the request to verify that the transfer is fair, reasonable, and in the payee's best interest. Ins. Code § 10139.5(b). The totality of the payee's circumstances is viewed in light of the factors set forth in Insurance Code section 10139.5(b). Petitioner seeks court approval of S.W.'s transfer of future life-contingent payments in the amount of $835,048.21 in exchange for $10,000. S.W. states that he is 35 years old, with no minor children. He states that he is currently unemployed, experiencing a financial hardship, and that he will use the money to purchase an RV or mobile home, and an affordable car. S.W. states that he has applied to the court for approval of prior transfers of his structured settlement payment rights on at least thirteen occasions, eight of which were approved.

In light of the factors set forth in Insurance Code section 10139.5(b), particularly in light of the fact that S.W. has attempted and/or completed numerous prior transfer applications, and because the current transfer will provide S.W. with an astonishingly low return based on the value of the payments being transferred, the court cannot conclude that the transfer is in payee's best interest. Accordingly, the petition is denied.

21. S-CV-0043523 American Home Energy, Inc. vs. Platinum Sales Group, LLC

The demurrer to cross-complaint is dropped as moot in light of the filing of the first amended cross-complaint on November 21, 2019.

22. S-CV-0043677 Seaberg, Jeffrey vs. Specific Properties, LLC, et al

The motion to change venue was dropped by the moving party.

23. S-CV-0043751 Rhoades, Stefanie vs. Santander Consumer USA, Inc.

Defendant's petition to compel arbitration is continued to December 20, 2019, at 8:30 a.m. in Department 31.

24. S-CV-0043879 In the Matter of Coffee Tea Distributors, Inc.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 9:00 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Petition for Judicial Supervision

The petition relating to judicial supervision of winding up affairs of corporation is granted as follows:

An order to show cause is set May 1, 2020, at 8:30 a.m. in Department 31, regarding why the court should not take jurisdiction over, make orders, and adjudge as to any and all matters concerning the winding up of the affairs of Coffee Tea Distributors, Inc., including all matters set forth and permitted in California Corporations Code sections 1802-1808.

Petitioners shall publish notice to all creditors at least once a week for three consecutive weeks in the Sacramento Bee, and shall mail notice to each person shown as a creditor or claimant on the corporation's records at such person's last known address. Corp. Code § 1807(b). The time limit for submitting proof of claims shall be four months from the date of the first publication of notice to creditors. Corp. Code § 1807(a). Any such claims shall be filed with the court, or be presented to counsel for Coffee Tea Distributors Inc., Kristen Hayes Kuse, located at 4900 Hopyard Road, Suite 100, Pleasanton, CA 94588. Creditors and claimants who fail to present their claims within the aforementioned time limit shall be barred from participating in any distribution of assets made by the court. Id.

These are the tentative rulings for civil law and motion matters set for Friday, December 6, 2019, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Thursday, December 5, 2019. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.